

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MANUEL ORTIZ	:	CIVIL ACTION
	:	
v.	:	
	:	
ATTORNEY GENERAL OF THE	:	
UNITED STATES, <u>et al.</u>	:	NO. 06-3083

REPORT AND RECOMMENDATION

L. FELIPE RESTREPO
UNITED STATES MAGISTRATE JUDGE

February 20, 2007

Before the Court is the “Emergency Petition for Writ of Habeas[s] Corpus Pursuant to 28 U.S.C. [§ 2241] & Request for Bail Pending Proceeding” (Doc. No. 1) (referred to herein as “habeas petition”) filed by Manuel Ortiz a/k/a Jose Mendez. As of the filing of the habeas petition, Ortiz was an inmate at the Montgomery County Jail in Norristown, Pennsylvania. See Hab. Pet. at 1.

The habeas petition challenges an “immigration detainer on statutory and constitutional grounds, and it does not appear from the allegations in the habeas petition that a final order of removal has been entered.” Ortiz a/k/a Jose Mendez v. Attorney General of the United States, No. 06-3644, Order at 1 (3d Cir. dated Oct. 3, 2006); see Hab. Pet. at 1-2. Requesting “bail pending Immigration Proceedings,” the petition alleges that Ortiz “do[es] not have any prior felony or misdemeanor convictions or charges that would cause him to be deported,” and that “[t]here is a strong likelihood that petitioner will not be adjudicated guilty on the present criminal offenses he now stands criminally charged [with] in Montgomery County, Pennsylvania.” Id. at 1-2 (internal quotation marks omitted).

Subsequent to the filing of the habeas petition, on or about February 15, 2007 the Court received a document styled “Motion to Withdraw Emergency Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § [2241] & Request for Bail Pending Proceeding” (Doc. No. 13) (referred to herein as “Motion to Withdraw”) signed by petitioner. The Motion to Withdraw alleges that in addition to charges currently pending against petitioner in Montgomery County, “[o]n August 24, 2006, a federal grand jury returned an indictment against [him] under criminal docket 06-433, alleging a violation of 8 U.S.C. § 1326(a) and (b)(2) (illegal reentry after deportation).” See Mot. to Withdraw ¶ 4. The motion further alleges and this Court’s criminal docket reflects at Criminal Action No. 06-433 that in November of 2006, he was arraigned, entered a plea of not guilty, and was ordered detained pending trial. See id. ¶ 5. However, Ortiz represents and the criminal docket also indicates that on January 10, 2007, he changed his plea to guilty, and he is currently awaiting sentencing. Id. ¶ 6.

The Motion to Withdraw specifically states that petitioner “**move[s] this Honorable Court to withdraw Emergency Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § [2241] and Request for Bail Pending Proceeding.**” See Mot. to Withdraw at 1 (emphasis added). Accordingly, since it appears that Ortiz wishes to withdraw his habeas petition at this time, the present petition should be dismissed.

My Recommendation follows.

RECOMMENDATION

AND NOW, this 20th day of February, 2007, upon consideration of the “Emergency Petition for Writ of Habeas Corpus Pursuant to Title 28 U.S.C. [§ 2241] and Request for Bail Pending Proceeding,” and in light of petitioner’s Motion to Withdraw, it is RECOMMENDED that the habeas petition be DISMISSED.

/s/ L. Felipe Restrepo

L. FELIPE RESTREPO

UNITED STATES MAGISTRATE JUDGE